## UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

In re: PHARMACEUTICAL INDUSTRY AVERAGE WHOLESALE PRICE LITIGATION	) MDL No. 1456 ) Master File No. 01-CV-12257-PBS ) Subcategory Case. No. 06-11337
THIS DOCUMENT RELATES TO:	Hon. Patti B. Saris
United States of America ex rel. Ven-A-Care of the Florida Keys, Inc., et al. v. Dey, Inc., et al., Civil Action No. 05-11084-PBS	) ) )

# DEY DEFENDANTS' MOTION IN LIMINE TO EXCLUDE FROM EVIDENCE THE REPORTS AND TESTIMONY OF THEODORE R. MARMOR, PH.D.

Defendants Dey Pharma, L.P. (formerly known as Dey, L.P.), Dey, Inc., and Dey L.P., Inc. (collectively "Dey") respectfully move this Court to exclude from evidence all of the reports and testimony of Theodore R. Marmor, Ph.D., Plaintiffs' purported "rebuttal" expert witness.

The grounds for this Motion are set forth in the accompanying Memorandum of Law.

In support of this Motion, Dey submits the following: (1) Defendants' Memorandum of Law in Support of their Motion *In Limine* to Exclude from Evidence the Reports and Testimony of Theodore R. Marmor, Ph.D.; and (2) Declaration of Neil Merkl In Support of Defendants' Motion *In Limine* to Exclude from Evidence the Reports and Testimony of Theodore R. Marmor, Ph.D.

Dated: March 12, 2010

Respectfully Submitted,

#### KELLEY DRYE & WARREN LLP

By: /s/ Neil Merkl

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## **LOCAL RULE 7.1 CERTIFICATION**

I certify that counsel have conferred pursuant to Local Rule 7.1(a)(2).

/s/ Neil Merkl Neil Merkl

### **CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing was delivered to all counsel of record by electronic service pursuant to Paragraph 11 of Case Management Order No. 2, by sending on March 12, 2010, a copy to LexisNexis File & Serve for posting and notification to all parties.

/s/ Neil Merkl Neil Merkl